STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	**:**	
	:	**06-0411**
Petition for approval of tariffs	**:**	
implementing ComEd's proposed	**:**	
residential rate stabilization program.	**:**	

ORDER

DATED: December 20, 2006

TABLE OF CONTENTS

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	**06-0411**
Petition for approval of tariffs implementing ComEd's proposed residential rate stabilization program.	:	

ORDER

By the Commission:

I. BACKGROUND

On May 23, 2006, Commonwealth Edison Company ("ComEd" or the "Company") filed its Petition for approval of tariffs implementing ComEd's proposed rate stabilization program. ComEd's proposed residential rate stabilization program phases in the rate increase occurring after the end of the mandatory transition period over a three-year period, with deferred recovery at an appropriate rate of return. (Petition, p. 2) In due course, the Administrative Law Judge ("ALJ") assigned to this proceeding established a schedule for the submission of pre-filed testimony, hearings and briefs.

In response to the Company's filing, the following parties filed Petitions to Intervene, which were granted: Dynegy, Inc.; BlueStar Energy Services, Inc.; Citizens Utility Board ("CUB"); People of the State of Illinois ("AG"); Cook County State's Attorney's Office ("CCSAO"); Building Owners and Managers Association of Chicago; Constellation NewEnergy, Inc.; Peoples Energy Services Corporation; Midwest Generation, LLC; Illinois Coalition for Job's, Growth and Prosperity; and Retail Energy Supply Association.

The following witnesses submitted testimony on behalf of Staff: Theresa Ebrey (ICC Staff Exhibit 1.0 (Revised); ICC Staff Exhibit 4.0), Michael McNally (ICC Staff Exhibit 2.0; ICC Staff Exhibit 5.0), and Peter Lazare (ICC Staff Exhibit 3.0 Corrected; ICC Staff Exhibit 6.0 Corrected).

During the course of the proceeding, Staff proposed various modifications to the Company's rate residential stabilization program as proposed in its Petition filed on May 23, 2006. The Company accepted certain of Staff's modifications; these modifications are reflected in the Staff Stipulation filed on September 7, 2006 and identified as ICC Staff Exhibit 7.0.

A proposed order was served on all parties. Briefs on Exceptions and Reply Briefs were received and duly considered.

II. COMED'S REVISED RRS PROGRAM

The central goal of the Residential Rate Stabilization Program ("RRS Program"), ComEd claims, is to help residential customers manage the transition from long-frozen reduced rates to rates set using ComEd's actual costs. Under the RRS Program, ComEd says the increase in average annual residential rates per kilowatt-hour will be capped at 10% per year in each of the years 2007, 2008, and 2009 (the "rate caps"). Under ComEd's proposal, customers will receive with their bills in January 2007 an explanation of the RRS Program and a form for enrolling in the Program (the "enrollment form"). ComEd says it will review the content of the enrollment form with Staff. Participation in the RRS Program, ComEd says, will be voluntary, and thus the RRS Program will apply only to those residential customers who choose to participate (the "opt-in feature"). ComEd states that only customers who are customers of record at the end of the December 2006 billing period (i.e., December 29, 2006) will be eligible to participate in the RRS Program.

To participate in the RRS Program, ComEd says customers will fill out the enrollment form, sign it, and send it to ComEd. Customers will be able to enroll in the RRS Program any time from January 2007 through August 22, 2007 (the "signup window"). Only customers who voluntarily enroll in the RRS Program during the signup window will be able to participate in the Program. According to ComEd, customers who choose to participate in the RRS Program will receive credits on their bills for amounts above the rate caps. RRS Program credits, ComEd says, will not be applied to customers' bills before the April 2007 billing period. Under the proposal, customers who enroll in the RRS Program prior to March 24, 2007 will receive Program credits during the April 2007 billing period. Credits will be applied to bills only on a going-forward basis subsequent to customer enrollment. If ComEd receives the customer's enrollment form no later than seven calendar days before the next regularly scheduled billing date, the first credit will appear on that next bill; if ComEd receives the form later, the first credit will appear on the customer's following bill. ComEd says it will track both the amounts of customers' bills that are deferred via credits (the "deferral amounts") and the repayments of such amounts on an individual customer basis. ComEd indicates it will collect the deferral amounts during the billing periods from January 2010 through December 2012, with a final adjustment in the March 2013 billing period, if required. Earlier recovery of deferral amounts is possible, ComEd says, if for example, the average increase in residential rates in 2008 or 2009 is lower than 10%, charges can be increased up to the cap to begin recovery of prior deferred amounts.

Participating customers who "final" their accounts, but provide another service address to which they are immediately relocating within the ComEd service territory and establish a new account with ComEd, will have the option to transfer the balance of their RRS Program deferral amounts from their old account to their new account and continue in the RRS Program ComEd says. For participating customers who "final" their accounts, but do not provide such other service address, establish such a new account, and choose to make such a transfer, ComEd indicates that the entire balance of deferral amounts will be due with the final bill. Customers will be able to terminate their participation in the RRS Program voluntarily, with the balance of deferral amounts due immediately. Balances of deferral amounts, ComEd adds, will accrue carrying charges at a 6.5% annual rate.

ComEd proposes that it be able to recover in a future rate case its reasonable and prudently incurred costs associated with offering and maintaining the RRS Program. ComEd proposes that the recovery be from all residential customers, not just those customers participating in the RRS Program. If the Commission approves an RRS Program that includes both the voluntary opt-in feature and individual calculation and tracking of deferral amount balances and repayments by customer, then ComEd says it is not asking the Commission to review or comment on the creation of a regulatory asset for such balances. In that situation, ComEd states that those balances will be accounted for as long-term customer receivables.

III. COMED'S POSITION

ComEd wants the Commission to affirm that ComEd should recover in a future rate case its prudent and reasonable costs of offering and maintaining the RRS Program. These costs, ComEd asserts, have not yet been determined, and ComEd does not seek their approval or recovery here; rather, ComEd is seeking a ruling that incurring such costs is appropriate. According to ComEd, implementing the RRS Program will require considerable effort. Among other things, ComEd says it will entail 2000 person-days of work from IT personnel, and will require modifications to several IT applications and business processes. ComEd asserts that customer education materials also will be needed, as will considerable call center resources. ComEd projects that it will incur approximately $16.27 million in implementation and ongoing business operations costs, an additional $9 million in uncollectibles expense, and a further $2.4 million to extend the enrollment period through August 22, 2007. ComEd says that although the figures are only projections, and cannot substitute for actual costs incurred, it believes they demonstrate the reasonableness of a plan to incur these costs.

The AG's proposal to "cap" ComEd's recovery of implementation costs is, in ComEd's view, untenable and unfair. ComEd argues that by agreeing to a 6.5% carrying charge on deferral balances, ComEd will not even be breaking even. Additionally, ComEd claims the proposal to "cap" cost recovery to encourage it to be efficient is contrary both to established law and fact. ComEd says it is legally entitled to an opportunity to recover its costs under the Act and constitutional law. (See U.S. Const., amend. XIV; Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989); Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 605 (1944); Bluefield Waterworks v. Public Service Comm'n, 262 U.S. 679, 690 (1923); Ill. Const. Art. I, § 15. There is no precedent, ComEd argues, for abridging those rights based on the notion that a utility deprived of cost recovery will thereby be forced to be more "efficient." ComEd also claims it already has ample incentive to be efficient because the Commission, in the rate case where recovery is requested, will review its costs for prudence and reasonableness – the same “incentive” ComEd says is applicable to every other operating cost.

In ComEd’s view, there is no legal or factual basis for impairing its right to cost recovery because of claims that the utility itself also benefits from the program. If this notion were true, ComEd asserts that such broadly beneficial programs as reliability and customer service improvements would result in rate cuts or incomplete cost recovery, discouraging utilities from benefiting their customers simply because they might also benefit. The right to recover reasonable and prudent costs, ComEd argues, is not conditioned on the absence of utility benefit.

Additionally, ComEd recommends that the Commission reject the AG’s suggestion that only the customers who enroll in the RRS Program bear the cost of implementation. ComEd maintains that all customers benefit from having the option to participate in the RRS Program. Thus, ComEd believes imposing implementation costs only on those customers who enroll would be fundamentally unfair, as they alone would be funding a benefit to all customers. Such disproportionate imposition of costs also would be counterproductive, ComEd claims, because it would harm the very customers whose interests the RRS Program is designed to protect, and could deter some of those customers from availing themselves of the RRS Program in the first place. ComEd further asserts that absent certainty over which customers will bear implementation costs, no customer can reasonably be expected to evaluate RRS Program participation against any other option. That is an additional reason why ComEd says it is requesting that the Commission determine in this Docket that prudent implementation costs should be recovered from all residential customers.

ComEd states that the AG proposes that payments received by ComEd in the years of recovery from customers participating in the RRS Program be applied first to the current month’s charges and then to repayment of the deferral. Similarly, ComEd indicates that the AG proposes that ComEd be barred from disconnecting customers for non-payment of the deferrals so long as the customer pays the amount associated with the provision of service for the current month. ComEd claims it still incurs actual and real costs that need to be recovered. Deferred amounts, ComEd contends, reflect charges incurred for valuable electric utility services rendered, and there are no grounds for making those amounts less collectible. In addition, ComEd asserts that customers must be treated fairly, and must all face the same consequences for nonpayment of deferred amounts that they do for other current charges each month. The AG, in ComEd’s view, has provided no evidence showing a need to distinguish repayment terms between customers opting into the RRS Program and those not opting in.

ComEd recommends that the Commission reject CUB-City’s and CCSAO’s proposal for an investigation into securitization in this Docket. Securitization, ComEd maintains, is not a practical option at this time, primarily because it would require both passage of highly technical state legislation and an irrevocable pledge by the state to insure the stream of revenues that constitute the pledged asset. To be practical, ComEd claims it also would require a large deferral balance as opposed to the more moderate deferral balance likely with the proposed plan.

According to ComEd, the AG asserted in its initial motion to dismiss that the Commission does not have authority to approve the RRS Program because ComEd has not yet filed tariffs for the RRS Program. ComEd argues that the tariffs it plans to file in connection with the RRS Program are subject to the Commission's jurisdiction under Section 9-201(a) of the Act. ComEd also maintains that proposing tariffs by petition, as opposed to filing, is a common, longstanding and authorized practice. ComEd claims petition filings are specifically authorized by Part 255, which provides that a request "by a public utility for special permission should be in the form of a petition." (See 83 Ill. Adm. Code 255.30(j)) ComEd also argues that neither of the decisions cited by the AG – A. Finkl and Sons Company v. Illinois Commerce Comm'n, 325 Ill. App. 3d 142, 151 (2001), and Lowden v. Illinois Commerce Comm'n, 376 Ill. 225, 230 (1941) – questions the Commission's authority to determine whether tariffs presented by petition are just and reasonable. Finally, ComEd believes the Commission does not lose its authority because ComEd did not file the tariffs with the Clerk in advance of Commission action on its Petition. The tariffs, ComEd says, will be filed promptly if the Commission grants the Petition.

ComEd says the AG claimed in its supplemental motion to dismiss that the RRS Program would violate test-year principles with respect to implementation and carrying costs. ComEd states that it intends to seek the recovery of its prudently incurred implementation costs in a future ratemaking proceeding and that the carrying costs of the RRS Program are not subject to the test-year requirements. (See Business & Prof'l People for the Pub. Interest, et al. v. Ill. Commerce Comm'n, 146 Ill. 2d 175 (1990) ("BPI II")) ComEd asserts that test-year rules do not apply when costs are recovered through a rider, as riders are themselves designed to appropriately match costs and revenues on a continuing basis. (See Citizens Util. Bd. v. Ill. Commerce Comm'n, 166 Ill. 2d 111, 136-40 (1995) (rejecting arguments that BPI II prohibited the deferral and subsequent recovery of coal tar clean-up costs))

In its Reply Brief, ComEd claims that BPI II test-year principles are designed to prevent a mismatch of revenues and expenses, and apply only when the Commission is establishing a base rate revenue requirement. The RRS Program, ComEd asserts, neither adds, subtracts, nor defers to a future case any component of ComEd's test-year revenue requirement. ComEd says it simply extends the period over which customers may pay for utility services, every dollar of which is charged at base rates set using a consistent test year.

ComEd also says it is not attempting to collect administrative expenses through the RRS Program. To the extent that administrative costs are implementation costs, ComEd says it will include them in a future ratemaking proceeding, not here. In addition, ComEd's maintains that test-year rules do not apply when variable, uncertain costs such as carrying charges are recovered through a rider. Riders, ComEd asserts, are expressly designed to match such costs and revenues appropriately on a continuing basis.

ComEd states that in response to suggestions from Staff and others, ComEd has agreed to accept an RRS Program that includes, among other things, both a voluntary opt-in feature that makes the RRS Program applicable only to those residential customers who choose it, and individual calculation and tracking of deferred balances and repayments by customer. If the Commission approves an RRS Program that includes these features, then ComEd is not asking the Commission to review or comment on the creation of a regulatory asset to account for the balances of amounts deferred. Rather, ComEd says such balances will be accounted for as long-term customer receivables.

In its Reply Brief, ComEd says the AG also tries to limit the Commission's consideration of the RRS Program to an artificially narrow view of its costs and benefits that ComEd believes is unsupported by the record. According to ComEd, the RRS Program benefits customers, not ComEd, and the Commission should be free to evaluate all of its customer benefits. The Commission can, and ComEd expressly asks that it does, determine whether the costs of the RRS Program outweigh the benefits. Presumably, ComEd states, the RRS Program will be approved only if the Commission determines that it should be in light of those costs.

According to ComEd, the AG claims for the first time in its Initial Brief that the RRS Program is not justified because its estimated expense (e.g., for implementation) exceeds its estimated financial benefit (e.g., unpaid deferrals). The AG, ComEd says, cites no legal authority for limiting the Commission's analysis of the public interest to solely a comparison of implementation costs versus dollars saved by participating customers. ComEd believes this is not the applicable standard. The Commission, ComEd contends, should evaluate whether the RRS Program is just and reasonable based on consideration of all its benefits. ComEd claims the benefits go beyond "savings," and include benefits such as the budget-management opportunity that customers who choose to participate can derive and the value of the option to defer even to customers who never elect to use it. The Commission, ComEd maintains, should approve the RRS Program if the Commission believes that the expenditures are reasonable in light of the benefits to customers. In ComEd's view, that determination involves more than just financial costs and benefits.

The AG, ComEd argues, ignores the non-quantifiable, but real, advantages that participants gain from greater financial flexibility and the public benefit of assistance, particularly for those in need, in transitioning to new rates. ComEd adds that the AG ignores the benefit of the option to all residential customers. The AG's own witness, ComEd says, acknowledged the RRS Program's positive effect on consumer satisfaction. In ComEd's view, the AG's actual calculations of "costs" and "benefits" are doubtful. ComEd says the AG's calculations assume maximum participation of 3%, which was used by ComEd to estimate ongoing operational costs. ComEd believes actual participation may vary significantly, and the 3% estimate does not cap the financial benefits.

ComEd says it accepted, for the purposes of this proceeding, that deferred RRS Program balances will accrue carrying charges at the rate of 6.5% per year in accord with Staff's stipulation that it would be reasonable and beneficial to customers for ComEd to offer a tariff including that charge. ComEd contends that although it is below ComEd's Commission-approved cost of money, which ComEd claims it is legally entitled to recover, ComEd agreed that the Commission need not resolve this issue if it concludes that carrying charges should accrue at the rate of 6.5% per year. According to ComEd, carrying charges are supposed to make a party deferring costs financially neutral as to whether or not recovery is deferred. That can only be the case, ComEd asserts, if such charges are set equal to the cost of capital, which, in turn, is defined by the debt and equity markets in which replacement funds are acquired. ComEd maintains it will finance the deferral amount the same way it finances everything else – with a blend of internally generated cash (equity) and debt. ComEd says no opposing witness or party can explain why the costs that ComEd incurs in raising funds through those markets should be capped at the rate it pays on customer deposits. ComEd asserts that the evidence in this Docket and the Commission's determination of cost of capital in its recent rate case prove that ComEd's cost of funds is greater than the deposit rate. Now, ComEd says, CUB-City and CCSAO argue against the testimony of its own witness and in favor of a carrying cost far below ComEd's actual cost of funds.

ComEd urges the Commission to reject the CUB-City claim that RRS Program approval be conditioned on securitization of the deferred balances. Securitization of these balances, ComEd states, is not currently lawful. ComEd says it would require the passage of new, highly technical state legislation, as well as an irrevocable pledge by the state to insure the stream of revenues. The Commission, ComEd claims, must act on the basis of existing authority, not on the basis of authority that it may or may not be granted.

In its Reply Brief, ComEd says Staff's sole disagreement with the RRS Program concerns the 18-month maximum period for recovery of deferred amounts in the event of early Program termination. Early termination, ComEd states, would occur only if its credit rating was below investment grade or in the event of its bankruptcy or a *force majeure* event. In these instances, ComEd claims it would need cash immediately to continue meeting overall service needs, and the tariffs therefore allow it to collect deferred balances on an shortened, but still substantially smoothed, schedule.

According to ComEd, no evidence supports the claim that the shortened recovery schedule is unjust or unreasonable. ComEd argues that the RRS Program depends on its continued financial strength. Early termination, ComEd says, occurs only if it no longer has that financial strength. In that circumstance, ComEd contends it will not only be unable to continue deferring payments but will need to collect all of its receivables. In ComEd's view, the shortened recovery provisions still give customers substantial deferral, appropriately balancing ComEd's need against RRS Program goals.

IV. THE AG'S POSITION

The AG requests that the Commission deny ComEd's petition because: (a) the costs of the proposed RRS Program are more than double the most optimistic estimates of program benefits; (b) ComEd's filing fails to comply with Article IX of the Act; and (c) the RRS Program violates the Illinois Supreme Court's holding in BPI II. According to the AG, the RRS Program, using ComEd's estimates of costs and benefits, has costs that are two to three times greater than the most optimistic estimates of the benefits. Consequently, the AG concludes that the Commission should deny ComEd's petition.

ComEd's, the AG states, estimates the base cost to administer the RRS Program would be $16.27 million. The AG says the base cost is a fixed cost associated with modifying ComEd's billing system, training call center employees and other changes that would be necessary to implement the program, regardless of the number of participants. ComEd, the AG adds, estimates that it would cost an additional $2.4 million to extend the enrollment period for the program through August 22, 2007. Hence, the AG says the total administrative cost of the RRS Program would be $18.67 million. At a 3% participation level, the AG claims the administrative cost per participating customer would be $186.70.

According to the AG, ComEd estimates that 80 percent of the amounts deferred by participants in the RRS Program would be uncollectible. This default rate, the AG says, is based on ComEd's historical default rate for customers with payment arrangements. The AG states that applying this default rate to the $11.26 million in costs which ComEd expects participants in the RRS Program to defer shows that over $9 million would not be recovered. These uncollectible expenses, the AG claims, raise the cost of the RRS Program an additional $9 million. Customers participating in the proposed RRS Program would accrue carrying charges at a 6.5% annual rate on the deferred balances. The AG claims that applying this rate to ComEd's estimates of annual deferrals through the proposed program, customers would incur approximately $1.70 million in total carrying charges. The associated uncollectible expenses, the AG says, raise the cost of the RRS Program an additional $1.36 million.

The largest benefit to customers participating in the RRS Program, the AG says, would go to the 80 percent of participants that ComEd expects to default. The AG states that these 80,000 customers would derive a benefit totaling $10.37 million over the course of the program. The AG says this figure includes $9.01 million in unpaid deferrals from amounts billed during 2007-2009 and $1.36 million in unpaid carrying costs in connection with those deferrals. The only additional benefit associated with the RRS Program, the AG asserts, is the value of the lower interest rate paid by the 20,000 program participants that ComEd expects to actually pay carrying charges. These program participants, the AG says, can be expected to pay carrying charges of $340,000 on $2.25 million in deferrals over the life of the program. The AG claims that one way to determine the value of the lower interest rate paid by these program participants might be to compare the cost of financing $2.25 million through the RRS

Program with available alternatives such as credit cards. Assuming that credit card companies charge three times the 6.5% annual rate offered through the RRS Program, the AG estimates consumers would save $640,000 by financing $2.25 million in deferrals through the RRS Program instead of using a credit card.

At best, the AG contends, program participants would derive a maximum of $11 million in benefits from the RRS Program. Defaulting customers, the AG says, would capture over $10 million of these benefits. The AG claims the RRS Program would provide no more than $640,000 in benefits to other participants in the program. The AG urges the Commission to reject the proposed RRS Program because the ratio of benefits ($11 million) to costs ($29 million) shows that the program is not even close to being cost-effective. The AG claims that a ratio of benefits to costs over 1.0 is the standard threshold for cost-effectiveness. The AG estimates the ratio of benefits to costs of the RRS Program is 0.38. According to the AG, this program will cost $2.63 for each dollar of benefit received by participating customers. The AG suggests the same benefit could be provided at a much lower cost if, for instance, ComEd were to contribute $11.05 million to LIHEAP or weatherization programs to assist low-income or payment-troubled customers.

Section 9-201(c) of the Act, the AG contends, states unequivocally that "[n]o rate or other charge . . . shall be found just and reasonable unless it is consistent with Sections of this Article [IX]." The AG goes on to say that Section 9-201(a) of the Act requires all proposed changes in rates to be formally filed as tariffs with the Commission:

> . . . no change shall be made by any public utility in any rate or other charge or classification or service…relating to or affecting any rate or other charge, classification or service . . . , except after 45 days' notice to the Commission and to the public as herein provided. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect and by publication in a newspaper of general circulation or such other notice to persons affected by such change as may be prescribed by rule of the Commission. The Commission, for good cause shown, may allow changes without requiring the 45 days' notice herein provided for, by an order specifying the changes to be made and the time when they shall take effect and the manner in which they shall be filed and published.
>
> When any change is proposed in any rate or other charge . . . , such proposed change shall be plainly indicated on the new schedule filed with the Commission . . . .

According to the AG, Section 9-201 of the Act provides that once a proposed tariff is filed, a 45 day notice period commences, during which the Commission determines whether to allow the tariff to go into effect or to schedule hearings to determine the justness and reasonableness of the proposed tariff change. The AG says the Commission can approve a tariff in less than 45 days after the tariff is filed, provided the Commission finds that there is "good cause" to accelerate the process. Where the Commission elects to hold hearings, the AG asserts the Commission must suspend the tariffs and establish a procedural schedule. The AG also suggests that ComEd failed to comply with the requirements of 83 Ill. Adm. Code 285.

Section 9-201(a) of the Act, the AG contends, authorizes only three courses of action that the Commission can take in response to a tariff filing: (a) allow the tariff to go into effect automatically at the end of the 45-day notice period ("pass to file"); (b) suspend the tariff prior to the end of the 45-day notice period and order proceedings to investigate the propriety of the proposed tariff; or (c) take action less than 45 days after the tariff is filed, where "good cause" has been shown to justify action on an accelerated basis. Quoting the Appellate Court, the AG says, "A decision to pass a tariff to file or suspend rates, pursuant to Section 9-201(a), is not a formal inquiry into the propriety of the rates as in a formal hearing under section 9-201(b)." (A. Finkl and Sons Company v. Illinois Commerce Commission, 325 Ill.App.3d 142, 151, 756 N.E.2d 933, 940 (2001))

According to the AG, in this case, the Commission has commenced a formal inquiry into the propriety of the rates under section 9-201(b). The AG suggests that Section 9-201(c) of the Act makes clear that the Commission can enter a finding of justness and reasonableness only after a formal hearing like the hearing process described in Section 9-201(b) of the Act. Article IX of the Act, the AG asserts, gives the Commission the power to find a rate "just and reasonable" if, and only if, certain requirements are met. The first such requirement, in the AG's view, is that a tariff has been filed. The AG maintains that ComEd has not filed a tariff in this docket. Although the Petition states that ComEd "seeks approval of tariffs," the AG says a review of the "Report of Rate & Tariff Daily Filings" on the Commission website reveals that ComEd has not actually filed tariff sheets for Rider RRS with the Commission. The AG adds that during the June 15, 2006 prehearing conference for this docket, counsel for ComEd stated that ComEd does not intend to file a tariff unless or until the Commission finds the "tariffs" proposed in this docket to be just and reasonable. In the absence of a tariff filing, the AG argues that the Commission lacks statutory authority to find ComEd's proposed rate change just and reasonable. According to the AG, the Commission "has power and jurisdiction only to determine facts and make orders concerning the matters specified in the statute." (Lowden, 376 Ill. at 230, 33 N.E.2d at 433) The AG maintains that there are no provisions in the Act authorizing the Commission to make a "just and reasonable" finding when there is no tariff on file. Consequently, the AG says the Commission cannot find Rider-RRS "just and reasonable" because ComEd has not filed a tariff in this case.

In its Reply Brief, the AG states that ComEd asserts that proposing tariffs by petition is authorized by 83 Ill. Adm. Code 255.30(j). While that is true, the AG contends that neither Article IX of the Act nor the Commission's rules authorize a finding of justness and reasonableness for a tariff that has not been formally filed with the

Commission. The AG maintains that Section 9-201(a) of the Act requires all proposed changes in rates to be formally filed as tariffs with the Commission, regardless of the length of the notice period. According to the AG, since ComEd has not yet filed a tariff, there is no legal basis for a finding of justness and reasonableness in this docket.

The administrative and carrying costs that ComEd seeks to collect through the proposed RRS Program are, in the AG's opinion operating expenses. Accordingly, the AG asserts that under BPI II, these costs must be recovered during the accounting period in which the costs are incurred. The AG claims that since that is not the case, the RRS Program violates BPI II. ComEd attempts to sidestep BPI II, the AG states, by asserting that the holding does not apply here because the instant case is a "rate design" docket rather than a ratemaking or revenue requirement proceeding. In the AG's view, ComEd's argument is factually incorrect and ComEd also incorrectly asserts that the RRS Program is "revenue neutral." BPI II, the AG argues, applies in this case because ComEd is seeking approval to increase its revenues by collecting additional operating expenses associated with the new RRS Program (e.g., carrying costs and RRS implementation costs). None of these costs, the AG says, has been approved elsewhere. The AG maintains that ComEd is prohibited from recording these or other operating expenses in one year for recovery in a later year, as ComEd proposes to do in the RRS Program. The Commission, the AG says, cannot approve a proposal that is prohibited by the Courts. The carrying costs and implementation costs that ComEd seeks to collect through the proposed RRS Program are, the AG maintains, operating expenses. According to the AG, under BPI II, these costs must be recovered during the accounting period in which the costs are incurred.

ComEd, the AG says, asserts that BPI II cannot be read to prohibit deferred recovery of operating expenses because the Supreme Court subsequently approved recovery, over a five year period, of coal tar cleanup expenditures at former sites of manufactured gas plants. (See Citizens Util. Bd. v. Ill. Commerce Comm'n, 166 Ill.2d 111, 651 N.E.2d 1089 (1995) ("CUB")) According to the AG, CUB was a case about amortized costs recovered over a five year period in which the Court specifically held that test-year rules did not apply. The AG argues that in contrast, BPI II was a case in which deferred recovery of operating expenses was prohibited because the court held that test-year rules did apply. The instant case, the AG claims, is a case in which test-year principles apply. Consequently, the AG believes BPI II prohibits deferred recovery of new operating expenses such as RRS implementation and carrying cost. The AG emphasizes that the test-year rules are intended to prevent a utility from mismatching revenue and operating expense data.

After first asking the Commission to find the RRS Program "just and reasonable," the AG says, ComEd attempts to hedge its position by also asking the Commission to affirm that ComEd should recover in a future rate case its prudent and reasonable costs of offering and maintaining the RRS Program. According to the AG, ComEd states that it is simply seeking a ruling that incurring such costs is appropriate. The AG urges the Commission to reject ComEd's invitation to affirm that ComEd should recover in a future rate case its prudent and reasonable costs of offering and maintaining the RRS

Program. In the AG's view, this is a request to affirm that cost recovery in future rate cases will, as always, be governed by the standards set forth in Article IX of the Act. The AG expresses concern that ComEd's request for an affirmation is an attempt to obtain pre-approval, or at least the appearance of pre-approval, of the cost recovery for the RRS Program. The AG believes that if the first of these interpretations is correct, Commission action is unnecessary; if the second interpretation is correct, Commission action would be unlawful.

ComEd, the AG says, does not cite any legal basis for the use of an appropriateness standard. The AG also contends that the Commission has no authority to issue advisory rulings or to pre-approve the appropriateness of costs for recovery in a future rate case. The AG asserts that it is not appropriate for an Illinois utility to represent that a program is "designed to help" customers when the program is actually designed so that the utility collects $2.63 in revenue for every dollar of benefit that the utility expects to provide to customers. The AG also claims that it is not appropriate for a regulated utility to cloak proposals that operate to the detriment of customers in warm and fuzzy acronyms. The AG also asserts that it is not appropriate for regulated utilities to engage in any activities that are inconsistent with their obligation to serve their customers.

V. STAFF'S POSITION

Staff recommends that the Commission approve the optional residential rate stabilization program ("optional program") proposed in Staff's direct testimony, as modified. (See Staff Stipulation, Staff Exhibit 7.0) In Staff's view, the optional program now supported by ComEd represents a considerable improvement over the mandatory program which ComEd originally proposed in its direct testimony, and gives ratepayers a reasonable range of options to address the potential bill impacts posed by post-2006 rates. Staff states that it identified certain problems in ComEd's original proposal and offered an alternative optional program in its direct testimony. The program proposed by Staff would be offered on an optional basis, in contrast to the mandatory program ComEd proposed. Under Staff's optional program, customers would decide at the inception of post-2006 rates whether to participate in the cap and defer program or pay rates that reflect the full cost of power and delivery. Customers choosing to "opt-in" would have their bills capped and deferred on an individual basis. The customer's individual deferral account will accumulate over the first three years of the program to reflect the differences between the capped and uncapped bills. Then, the deferrals will be eliminated over the remaining three years as the customer pays above-market prices. Furthermore, under Staff's proposal if the customer leaves the ComEd system before the deferral account is fully paid off, that customer would be individually responsible for the balance in his/her account until it is fully paid off.

According to Staff, an issue arose concerning how bills are to be adjusted when customers opt-in to the program. One alternative, Staff says, would be to retroactively apply the rate caps to bills that customers have already incurred and paid since January 2, 2007. Under that scenario, participants would receive bill credits reflecting reductions retroactive to the beginning of the year. Staff indicates that the second alternative is for enrollees to participate in the program on a going-forward basis. The rate caps would apply to bills incurred after the customer's enrollment date. Staff says that a customer who signs up in July would not receive credits for electricity consumed in January through June of that year.

The first alternative of calculating credits back to January 2, 2007 would, Staff claims, offer the advantage of providing more significant immediate relief to customers encountering difficulty in the transition to post-2006 electricity rates. That would be especially true, Staff says, for space heating customers whose usage and bills peak in winter months. Staff claims this alternative will, however, also raise rates for these customers down the road. Under the plan, Staff states that any savings realized in the first three years of rate caps must be paid back with interest in the last three years of the program. If customers receive credits retroactive to January 2, 2007, their deferred balances will rise and their rates will rise accordingly in years 2010-2012.

According to Staff, the second alternative to implement the rate caps on a going-forward basis would have the opposite effect of costing ratepayers more initially but reducing the upward pressure on rates in years 2010-2012. This alternative, Staff says, would offer no retroactive credits to ease the financial strain for individual customers in the first two to three months of the post-2006 era. Staff asserts that the absence of credits; however, would translate into lower deferred balances to be repaid in years 2010-2012. Staff believes the best approach would be to implement rate caps on a going-forward basis. This alternative, Staff says, would reduce the levels of accumulated deferred balances and thereby make it easier for customers to repay these balances in years 2010-2012. According to Staff, it should be remembered that any benefits received in 2007-2009 must be repaid with interest in years 2010-2012, so greater benefits in the short-run become higher costs later on. In addition, Staff states that implementing rate caps on a going-forward basis would avoid any administrative or technical issues in applying the caps to prior billing periods.

Staff objects to one provision of ComEd's proposed Rider RRS tariff which was submitted in conjunction with its surrebuttal testimony. That provision applies to the early termination of the program. The proposed language, Staff says, is designed to shift risk associated with the termination of the program from ComEd to ratepayers participating in the plan by providing for accelerated payment of the deferred balance in certain circumstances. According to Staff, considering that participating ratepayers will opt-in to the plan to address difficulties in paying their post-2006 electricity bills, ComEd is shifting risk onto customers who are least able to assume that risk. In Staff's view, it would be unreasonable for the Commission to protect ComEd at the expense of these customers.

Staff indicates that the proposed tariff would terminate the RRS Program early if rating agencies lower ComEd's credit rating below a threshold level; ComEd becomes subject to a bankruptcy proceeding; or ComEd experiences a *force majeure* event. If early termination were to occur, Staff indicates that ComEd proposes to alter the period for recovery of deferred balances under the program to the lesser of the number of monthly billing periods equivalent to the number of billing periods during which RRS Adjustments had been applicable prior to the commencement of the situation, or 18 monthly billing periods. Staff considers the first provision that is invoked if the program is terminated before 2010 to be acceptable. If, for example, the program were terminated after customers participated for six months, then that provision would require repayment of accumulated deferred balances over an additional six-month period. Staff says its concern lies with the second provision that would limit recovery under termination to a maximum 18-month period. If the program were to be terminated in November 2009, then, instead of having another 35 months to repay the deferred balances as provided for in the program, Staff states that customers would be required to repay in only 18 months. The result would, in Staff's view, be an unanticipated increase in the monthly electricity bills for these customers when they already must pay the market price of electricity as well as contribute to the reduction of their deferred balances under the program.

Staff argues that customers will have opted-in to the program because of difficulty they are encountering in paying post-2006 electricity rates. ComEd's accelerated 18-month repayment provision would, Staff asserts, make it that much more difficult for these customers to pay their electricity bills. Staff states that these early termination provisions indicate that ComEd is subject to a number of business risks. Staff contends that business risk is a fact of life not just for ComEd but for all U.S. corporations. Staff believes it is inappropriate for ComEd to try to shield itself from normal business risk at the expense of some of its most vulnerable customers. Staff maintains that it is not the customers' fault that these early termination provisions would come into play. Staff contends that nevertheless, under ComEd's proposed tariff, they would pay a high cost for early termination. According to Staff, if ComEd, for example, fell into bankruptcy because of poor business decisions, then ComEd's proposed early termination provision would involuntarily recruit RRS Program participants to help ComEd out of a situation it has created itself. Staff recommends that the Commission take the necessary steps to remove this language from the proposed tariff.

Staff says it can support the 6.5% carrying charge because given that the program could last up to six years, ComEd may not be able to finance it entirely with short-term debt. Staff also states that the relatively smaller size of the deferred balance, combined with the three to six-year term of the program, makes it reasonable to assume that ComEd would use a mixture of short-term debt, long-term debt, and equity to finance the deferred balance. Staff adds that ComEd's cost of long-term debt and common equity, as approved in its last rate case, is approximately 6.48% and 10.045%, respectively. Staff believes that ComEd's current cost of short-term debt would likely be at or below its authorized cost of long-term debt. Staff believes that 6.5% represents a reasonable estimate of the cost of a mixture of these various types of financing.

In its Reply Brief, Staff observes that CUB-City and CCSAO take issue with the 6.5% carrying charge. Staff recommends that the Commission reject CUB-City's and CCSAO's arguments concerning the 6.5% carrying charge. Staff argues that contrary to CUB-City's claim, the "lowest interest rate possible" is not the appropriate carrying charge applicable to the deferral balance. Rather, Staff believes the appropriate carrying charge is, more accurately, the actual cost of the capital used to finance that balance. Staff also maintains that CCSAO's argument that the Commission should use the customer deposit rate of 4.5% should be rejected as well. Staff asserts that CCSAO provides no explanation why the customer deposit rate is appropriate, and believes that rate is not representative of any measure of ComEd's financing costs.

CUB-City's arguments that the risk to ComEd of the deferral balance is lower than that of normal utility assets and that ComEd bears little risk of non-recovery are, in Staff's view, misguided. Staff does not agree that the deferral balance should be considered as a distinct asset from "normal" utility assets. A rate stabilization plan does not, Staff argues, provide a service that generates its own cash flows. Staff claims that instead, its very purpose is to modify the cash flows produced by "normal" utility assets. Given the small expected size of the deferral balance relative to ComEd's overall operations, Staff believes this program is not likely to change ComEd's overall risk profile at all. Thus, Staff maintains that ComEd's actual financing cost will not change due to the relatively low risk of this small program.

According to Staff, CUB-City's proposal to disallow any rate stabilization program that does not include securitization is too extreme. Staff states that such a proposal would, if the deferral balance asset is not securitized, deny all customers the option to defer payments altogether. Even if the Commission concludes that the securitization of the deferral balance asset would be preferred, Staff believes it is still better to offer customers the option to decide for themselves if the proposed deferral program is right for them, whether securitization is included in the proposal or not, than to automatically preclude that option in the absence of securitization. Given that the plan is optional, to the extent that a customer believes that a 6.5% carrying charge is too high, Staff says that customer can simply elect to not participate in the program offered by ComEd. Staff adds that such a customer would be free to seek financing from sources like banks, credit unions, and credit card companies.

Under the optional program, it is Staff's understanding that ComEd proposes to record a customer receivable at the time delivery occurs and no longer plans to record a regulatory asset for the deferred balances. If the Commission approves the optional program, Staff does not take issue with ComEd's proposed accounting. According to Staff, if the Commission approves Rider RRS, the costs proposed for deferral should meet the criteria set forth in Financial Accounting Standard's Board Statement No. 71 ("FAS 71"). Staff believes the Commission can provide reasonable assurance of the existence of an asset and ComEd can record a regulatory asset under FAS 71. Staff believes the specific details of the RRS as set forth in ComEd witness DesParte's testimony, while not required by FAS 71, should be well defined in the Commission's Order. If the Commission approves ComEd's original proposed Rider RRS or a variation of that plan, with the intention of allowing recovery of the costs so deferred in a later proceeding, then Staff recommends that the Commission's Order limit the specific expenses that are to be deferred as a regulatory asset to only purchased power expense and set the amortization period for the deferred costs through 2012 (or whatever period the Commission deems appropriate). Whether the Commission accepts ComEd's original proposal or the optional program proposal, Staff recommends that the Commission to set the rate for the carrying charges to be applied to any deferred balance to 6.5%.

In its Reply Brief, Staff urges the Commission to reject ComEd's argument that the Commission should weigh-in on future recovery of program implementation costs. Staff states that while ComEd is not asking for approval of any specific amount of costs, it is seeking a ruling that incurring such costs is appropriate. Staff says ComEd also discusses the kinds and levels of activities that will be undertaken on behalf of the program in the areas of IT, customer education and uncollectibles. Staff also notes that ComEd criticizes the AG's argument for placing a cap on ComEd's expenditures for this program. In Staff's view, there is no basis for the Commission to address costing issues related to the program in this proceeding. According to Staff, ComEd has not identified any specific costs that it is asking the Commission to approve. The cost estimates provided by ComEd, Staff claims, amount to unsupported numbers reflecting estimates of future costs that may or may not accurately reflect reasonable expenditures on the program. It would be inappropriate, Staff argues, to provide any guarantees to ComEd for recovery of costs that do not yet exist. Similarly, Staff believes there is no basis in this proceeding for the Commission to place a cap on unknown program costs as proposed by the AG.

Staff believes that any expenditure on the program should be treated in the same manner as all other utility costs. Staff states that, for example, the costs associated with the program should be considered only at the time that ComEd seeks to include them in the test year chosen for determining the revenue requirement in any future rate proceeding. It would be inappropriate, Staff maintains, for the Commission to guarantee in this case recovery of Rider RRS costs in an unknown test year for a future rate case. Staff believes that instead, the standards that apply to other utility costs should apply to RRS costs as well. Staff suggests that when ComEd files its next rate case, it must provide the appropriate level of support for inclusion of RRS costs in the revenue requirement for the proposed test year. Staff says that is how other costs are treated by the Commission, and that is how RRS Program costs should be considered.

Staff states that while it does not want the Commission to violate its test year principle, Staff does not agree with the AG that the facts and circumstances of this proceeding result in such a violation of BPI II. Staff says the AG's Supplemental Motion to Dismiss, which raised the same BPI II arguments, was denied. According to Staff, a significant fact which the AG's BPI II argument does not address is that under the optional RRS Program agreed to by ComEd and Staff, ComEd is no longer seeking approval of a regulatory asset, which would have accounted for costs deferred over a period of time for recovery in a subsequent rate case. Under the optional program, it is Staff's position that BPI II is no longer at issue. Since the optional program will account for customers participating in the program by recording a customer receivable, Staff says ComEd eliminates any need to record deferred balances which results in test year principles not even coming into play.

According to Staff, the AG's Initial Brief also argues again that ComEd's filing does not meet Article IX of the Act's requirements, the same argument in its motion to dismiss which the Administrative Law Judge denied on September 7, 2006. Staff notes that it opposed the AG's motion to dismiss and responded to those arguments concerning Article IX in a response dated July 5, 2006 and disagrees with the AG's arguments for the reasons stated there.

VI. CUB-CITY'S POSITION

CUB-City indicate they cannot support the plan as proposed because it does not provide the benefits that such a plan should offer, particularly in regard to the 6.5% carrying charge rate. They state that if ComEd securitizes the deferral amounts and the rate is low enough, CUB-City believe that such a program provides customers a better option and more customers are likely to participate. CUB-City assert that any rate stabilization plan should offer consumers the lowest interest rate possible. They say that while the 6.5% is lower than the original proposal of 8.01%, it remains unreasonably high. CUB-City claim that ComEd bears very little risk of non-recovery as the proposal includes a true-up mechanism to ensure recovery of the deferral balance. They also assert that the opt-in approach should alleviate ComEd's concerns regarding the financial risk and capital constraints associated with deferral balances. CUB-City suggest that the risk associated with the deferred generation balance is much less than for normal utility assets.

CUB-City do not want the Commission to order ComEd to finance deferrals with short-term debt without also ordering ComEd to pursue securitization. CUB-City propose that if the Commission determines that a RRS Program will benefit consumers, it should issue an order making approval of the plan contingent upon the legislature addressing the securitization issue. While ComEd expresses concerns regarding delays, CUB-City assert that the Commission can act in sufficient time for legislators to act in November veto session. They suggest that for the vast majority of customers who do not have electric heat, the impact of the rate increases will not be felt until spring when they start to use their air conditioning. CUB-City say the time pressure ComEd cites does not apply.

VII. CCSAO'S POSITION

CCSAO urges the Commission to carefully consider whether the RRS Program is necessary and worth the potential costs to ratepayers. In CCSAO's view, the Commission needs to determine if the petition has met the requirements of Illinois law. In the event that the Commission finds that the plan is permissible under Illinois law, then CCSAO says the Commission must determine whether the RRS Program is just and reasonable in light of the facts of this case. CCSAO argues that ComEd has failed to demonstrate that the plan has enough value to ratepayers to justify its substantial administrative costs, and given its unproved value, that it should be financed by ratepayers. If the Commission decides to approve the program, then CCSAO claims the Commission should set the lowest reasonable carrying charge/interest rate. The Commission, CCSAO argues, should adopt the interest rate the Commission uses on customers deposits proposed by the AG's witness, 4.5% for 2006.

VIII. COMMISSION ANALYSIS AND CONCLUSIONS

As a preliminary matter, the AG argues that ComEd's filing fails to comply with Article IX of the Act. The AG essentially argues that because this proceeding was initiated by a petition rather than a tariff filing, the Commission cannot legally approve tariffs in this proceeding. Both ComEd and Staff disagree with the AG's position and claim that a petition is a legal means through which a tariff can be established. The Commission first observes that Attachment C to the Petition in this proceeding, ComEd Exhibit 2.1, was ComEd's originally proposed tariff, Rider RRS, Residential Rate Stabilization Program, to which ComEd subsequently proposed changes in this case. That proposed tariff was electronically filed on May 23, 2006 on the Commission's e-Docket system. The Commission notes that in Docket 00-0259, ComEd filed a petition requesting permission to place into effect a tariff that provided for an alternative means of calculating the market value of power and energy as provided in Section 16-112 of the Act. A similar petition was filed by Central Illinois Public Service Company and Union Electric Company in Docket 00-0395. The Commission also observes that the AG was a party to those consolidated proceedings both of which were initiated by petition and ultimately produced new tariffs implemented by the utilities. While the Commission will not endeavor to list every instance where a tariff proceeding has been initiated by petition, it will point out that in Docket 00-0802 Central Illinois Public Service Company and Union Electric Company filed a petition to modify their nonresidential delivery service rates and to establish for the first time their residential delivery services tariffs. Again, the Commission observes that the AG was a participant in that proceeding. The Commission finds the AG's suggestion that the only way a tariff can be filed is through a tariff filing to be incorrect.

The AG also argues that ComEd's proposal cannot be approved in this proceeding because it would violate the test year standards as established in <u>BPI II</u>. According to both ComEd and Staff, the current proposal does not violate the test year standards. The Commission is quite familiar with the Court's decision and among other things, <u>BPI II</u> examined the recoverability of certain deferred costs in the context of a Part 285 test year rate proceeding. That is, the Court assessed whether those costs, which by definition were incurred prior to the 12-month test year, were properly includable in the ratemaking formula used to determine revenue requirement. The Court observed,

> a utility's rates are a function of its annual revenues and operating expenses, as well as its rate base. In order to accurately determine the utility's revenue requirement, the Commission established filing requirements under which a utility must present its rate data in accordance

> with a proposed one-year test year. The purpose of the test-year rule is to prevent a utility from overstating its revenue requirement by mismatching low revenue data from one year with high expense data from a different year. (Business & Professional People I, 136 Ill. 2d at 219)

The Court found that two of the three deferred costs at issue – deferred depreciation and deferred decommissioning costs – were in the nature of operating expenses and as such were not properly includable in the calculation of test year revenue requirement. The Court later determined, on review of the Commission's generic coal tar order, that BPI II did not bar the recovery of certain expenses through pass-through riders. The Court stated, "We agree with the Commission and the utilities that the test-year rule seeks to avoid a problem not present when expenses are recovered through a rider." The instant proceeding, unlike the test year rate case that was the subject of BPI II, does not involve an attempt by a utility to establish revenue requirement under Part 285 or otherwise. Whatever costs are appropriate for inclusion in test year revenue requirement are the subject of a different proceeding. Nor has it been shown that this case involves an attempt to determine the appropriate amount and recoverability of other costs through some other mechanism, such as a rider to recover power supply costs. Those issues are also the subject of other proceedings and processes.

What this case does entail is a proposal to phase-in the impact of recovering costs whose quantification and underlying recoverability are established elsewhere. The Court in BPI II, furthermore, did not seem to suggest or assume that rate moderations plans are inconsistent with principles enunciated in BPI II, noting: "[o]n remand the Commission will establish new rates, and presumably a new moderation and allocation plan." (BPI II, 146 Ill.2d at 262) The Commission finds it significant that ComEd does not propose to defer administrative costs associated with the RRS Program nor does it seek approval of a regulatory asset that would be recovered in subsequent rate proceedings. Instead, the only costs to be deferred and upon which carrying charges would accrue are supply costs for those residential customers that choose the optional rate. The deferred electricity charges and associated carrying charges that are the subject of this proceeding are simply not the type of operating expenses which the Court in BPI II found were operating expenses subject to test year rules and standards. All things considered, the Commission concludes that neither the test year rules, Part 285, nor the BPI II standard prohibit the Commission from adopting an optional residential rate stabilization plan whereby ComEd's optional residential tariff would allow the customer to defer paying a portion of its electricity charges which would accrue interest to be paid subsequently by that participating customer.

In the event that its threshold legal arguments do not prevail, the AG urges the Commission to reject ComEd's proposal because in its view, the benefits of the program do not exceed the costs. In its Initial Brief, the AG asserts that spending $29 million to provide $11 million of benefits is not justified. Such speculative calculations about costs and benefits of a future program suffer from the obvious shortcomings of relying on assumptions that are simply too difficult to predict with precision in advance. For example, estimates about the economic benefits are strongly influenced by the estimated number of customers participating in the program. As for the AG's calculation of potential costs of the program, it included around $9 million as an estimate of uncollectible deferrals. This inclusion ignores the simple fact that, even if it represents an accurate estimate of bad debt, ComEd would incur these uncollectibles even absent an RRS Program. More importantly, and all speculation aside, the Commission believes the AG has oversimplified the matter. Under the AG's calculus, policy considerations such as the impact of Commission decisions on the environment could not be considered. Additionally, under such a framework, when considering the location of utility facilities the Commission could consider only the cost of various alternatives. In the Commission's view, such a narrow decision making framework is neither reasonable nor workable. The Commission believes there are important public policies at issue here that go beyond dollars and cents and, with all due respect, believes that in its zeal to fight increased utility rates the AG may have lost its perspective on what constitutes sound public policy. In any event, the Commission believes the optional RRS Program provides an option that all residential customers may wish to give serious consideration and has the potential to offer significant benefits to those customers that choose to participate. The Commission finds that all things considered, the optional RRS Program will produce potential benefits that justify the expenditures that appear necessary to implement the program. The Commission emphasizes that not all costs and benefits are easily quantified in dollars and cents, this is the reality of public policy, and the AG's overly simplistic and highly speculative cost/benefit analysis is rejected.

Having said the above, we also believe there is merit to the AG's proposal of making direct contributions to low-income and other customer assistance programs. Such funding provides additional relief for customers who can least afford a significant increase in their bills. The Commission strongly encourages ComEd to contribute $30 million over the next three years to low-income assistance and senior programs as well as energy efficiency and renewable energy programs. As this is a voluntary contribution, the Commission does not expect the Company to seek to recover any portion of these contributions in future rate cases. The Company should file a description of the programs it plans to fund or implement within 60 days of the entry of this order and the Commission will approve or modify such programs within 150 days after ComEd's proposal has been filed. We believe it is important to offer the RRS Program as an option for all residential customers and at the same time we want to ensure that the neediest customers receive additional support during this transitional time.

CUB-City suggest the Commission should only approve an RRS Program in concert with a securitization program. The Commission, however, does not posses the statutory authority to implement a securitization program in connection with an RRS Program. The suggestion that the Commission can rely upon the legislature to pass necessary legislation on the subject is simply unrealistic. While the Commission appreciates CUB-City's participation in this proceeding, it appears that they, like the AG, may have lost their perspective on what public policies best serve utility customers. In any event, the Commission rejects the securitization proposal because it lacks authority to order or implement it.

ComEd originally proposed that deferrals accrue interest at a rate equal to its overall cost of capital. Other parties objected to this proposal and ComEd, along with Staff, now proposed that deferrals accrue interest at a rate of 6.5% per annum. Currently, CUB-City and CCSAO object to this interest rate and insist that a lower rate should be applied if the Commission adopts an RRS Program. We agree with CUB-City and CCSAO that the lowest interest rate possible should be applied to this program. This is a very unique program in that there are no eligibility requirements per se for residential customers (unlike LIHEAP, for example) wishing to sign up for the RRS program. While it is true that every residential customer is eligible to opt into it, the interest rate for the deferrals is a major component of the RRS Program and a key consideration for customers debating whether to sign up. An important, if not the most important, part in the estimation of the overall benefits of the program is the number of customers participating in the program. At an offered interest rate of zero percent, it would make financial sense for every residential customer to defer paying a portion of the upcoming rate increases because there would be no cost associated for doing so. While we are concerned about the impact on residential customers resulting from the sudden increase in rates in 2007 we also have to keep in mind that ComEd will face financial challenges due to the deferment of a substantial share of its revenues for up to three years. ComEd and Staff make valid points for approving an interest rate of 6.5%. However, as with many aspects of this program, this is just an estimate of ComEd's actual cost of financing the deferral. This was further demonstrated when ComEd, during oral argument, offered to lower the interest rate to the rate customers receive for deposits. Additionally, Staff believes that the cost of short-term debt for ComEd would indeed be lower than 6.5% and there is reason to believe that ComEd will use a significant amount of short-term debt to finance the RRS Program. Staff has also acknowledged that the actual cost is difficult to predict for a number of reasons. More importantly, the Commission feels justified to shift part of the burden of this program to ComEd's shareholders. After all, the shareholders, just like ratepayers, have a very strong interest in the success of a smooth transition from frozen rates to market based rates. ComEd's ratepayers deserve the option to make the transition to higher rates less drastic and sudden and they deserve to do so on terms that are reasonable and fair to them. A zero interest rate for deferrals would certainly achieve that goal but in our opinion such a scheme would inappropriately shift too much of the burden to the shareholders. We feel that the midpoint between zero and ComEd's proposed 6.5% is fair to both shareholders and ratepayers. The Commission believes that a 3.25% rate for deferrals makes the RRS Program a very attractive option for residential customers who will be challenged with an appreciable increase in their electric bills.

The AG's witness in this proceeding proposed that payments received in the years of recovery from customers participating be applied first to the current month's charges, then to repayment of the deferral. That witness also suggested that ComEd should not be able to terminate service to a customer for non-payment of the deferrals, so long as the customer pays the amount associated with the provision of service during the current month. ComEd objects to these recommendations claiming, among other things, that customers should face the same consequences for nonpayment of deferred amounts that they do for other current charges each month. It appears that the AG did not address this proposal in either its Initial Brief or its Reply Brief and the only reason stated by its witness that the proposal is necessary to "protect" participating customers. In the absence of a better explanation of why deferred electricity charges should be treated differently than current electricity charges, given the obvious incentive not to pay deferred amounts such a proposal would create, the Commission rejects the proposal of the AG's witness.

In its Initial Brief, ComEd asks the Commission to affirm that it should recover in a future rate case its prudent and reasonable costs of offering and maintaining the RRS Program. ComEd claims it is simply seeking a ruling that incurring such costs is appropriate, but does not seek their approval or recovery here. The AG and Staff object to this proposition claiming such relief would be inappropriate and illegal. As ComEd is well aware, in a rate case, it is entitled to request recovery of all prudent and reasonable operating expenses. Similarly, subject to test year rules and standards, the Commission is legally obligated to allow ComEd the opportunity to recover from its customers all prudent and reasonable expenses incurred to provide utility services. In the Commission's view, there is nothing more it can say or do regarding the issue in this Order.

Staff takes issue with one aspect of ComEd's proposed recovery mechanism that would become applicable in the event of an early termination of the RRS Program. Specifically, Staff objects to the provision whereby recovery of Regulatory Asset Account ("RAA") balances could be shortened from as much as approximately 36 months to 18 months. As the Commission understands it, if the early termination provision becomes effective during the period after the RRS Program has been in effect for more than 18 months but with more than 18 months of RAA balance recovery remaining, ComEd's proposal would shorten recovery of balances to an 18-month period. Staff appears to be concerned that shortening the recovery period to as little as 18 months might be overly burdensome to participating customers. ComEd appears to be concerned that providing a recovery period of up to approximately 36 months, in the event of an early termination event, could be overly burdensome to ComEd. Under the example from Staff's Initial Brief where an early termination event occurs in November 2009, Staff points out that under ComEd's proposal the period to repay deferred balances would be shortened from 35 months to 18 months. What Staff appears to overlook, however, is that in the absence of some accelerated recovery the only benefit of early termination to ComEd in that example would be to eliminate one-month of deferrals and to complete recovery of deferred amounts one month early. In the Commission's view, both Staff and ComEd have valid concerns, and as with many tariff related terms and conditions there is no "right" or "wrong" but, instead, the Commission is required to balance competing interests. Given the specific circumstances present here, the Commission believes that in the event of an early termination event, accelerated recovery should take place for the lesser of (a) the number of monthly billing periods equivalent of the number of billing periods during which RRS Adjustments had been applicable prior to the commencement of the situation, or (b) 24-monthly billing periods. The Commission concludes that replacing the 18-month period with a 24-month period properly accommodates the concerns of ComEd and Staff and is in the public interest.

Having reviewed the entire record of this proceeding as well as the briefs filed by the parties, the Commission finds that an optional Rider RRS is in the public interest and the Commission has the authority to approve Rider RRS in this proceeding. The Commission further finds that ComEd should implement Rider RRS in a manner whereby information on individual customer deferrals and interest thereon is maintained. Given these findings, the need for the Commission to make any further conclusion or finding with regard to a regulatory asset in this proceeding is unnecessary. The Commission authorizes and directs ComEd to make a compliance filing implementing Rider RRS consistent with the conclusions contained in this order. Such compliance filing is to be made within ten business days of service of this final order and new tariff sheets authorized to be filed by this Order should reflect an effective date not less than five business days after the date of filing, with the tariff sheets to be corrected, if necessary, within that time period.

IX. FINDING AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, is of the opinion and finds that:

(1) Commonwealth Edison Company is an Illinois corporations engaged in the retail sale and delivery of electricity to the public in Illinois, and is a "public utility" as defined in Section 3-105 of the Public Utilities Act and an "electric utility" as defined in Section 16-102 of the Public Utilities Act;

(2) the Commission has jurisdiction over the parties and subject matter of this proceeding;

(3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and/or conclusions of law;

(4) subject to the determinations made and conditions imposed herein, the Commission has authority under the Public Utilities Act to approve the proposed Rider RSS;

(5) subject to the determinations made and conditions imposed herein, Rider RSS proposed by Commonwealth Edison Company, as modified to reflect the findings herein, is just and reasonable; Commonwealth Edison Company should be authorized to file and place into effect such tariff sheets, as modified;

(6) the new tariff sheets authorized to be filed by this Order should be filed within ten business days of service of this Order and should reflect an effective date not less than five business days after the date of filing, with the tariff sheets to be corrected, if necessary, within that time period.

IT IS THEREFORE ORDERED that Commonwealth Edison Company is authorized and directed to make a compliance filing implementing Rider RRS consistent with the conclusions contained in this order. Such compliance filing is to be made within ten business days of service of this final order and new tariff sheets authorized to be filed by this Order should reflect an effective date not less than five business days after the date of filing, with the tariff sheets to be corrected, if necessary, within that time period.

IT IS FURTHER ORDERED that any motions or objections or other matters in this proceeding that remain unresolved are hereby deemed disposed in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 20th day of December, 2006.

(SIGNED) CHARLES E. BOX

Chairman